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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,730	07/24/2001	Engelbert Locher	22750/494	5592
26646	7590	12/11/2003		
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004				
			EXAMINER AFTERGUT, JEFF H	
			ART UNIT 1733	PAPER NUMBER

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/911,730

**Applicant(s)**

LOCHER ET AL.

**Examiner**

Jeff H. Aftergut

**Art Unit**

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 9-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) -                      6) ☐ Other:

*Election/Restrictions*

1. Applicant's election with traverse of Group I, claims 1-8 in the response dated November 6, 2003 is acknowledged. The traversal is on the ground(s) that in order for the restriction requirement to be proper the examiner must show that the inventions are both independent and distinct from one another (rather than independent or distinct). This is not found persuasive because as set forth in MPEP 803:

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) **or** distinct as claimed (see MPEP § 806.05 - § 806.05(i)); **and**

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).”

The applicant focuses on the independence of the claims and recites MPEP 802.01 for support to the contention that the inventions are in fact not independent of one another. Whether they are independent or not is immaterial as the requirement for distinctness has been established as previously noted in the restriction requirement. The applicant did not address whether the inventions were distinct or not and therefore it is believed that applicant agreed with the Office interpretation of the various groupings of claims.

The applicant also focused on the burden requirement in the restriction requirement and stated that a search of the elected method group would entail a search of the apparatus used to make the same as well as the article of manufacture. As established in the restriction requirement, there clearly are different fields of search which are mandatory and which are

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separate from each other for the method, article, and apparatus for manufacturing. Additionally, applicant is advised that different statutory classes of invention require different considerations in determination of patentability such as for example, in an apparatus claim the material worked upon is given no patentable weight while the same is untrue for a process claim. As such, not only is there an associated search burden but there is also an examination burden associated with keeping the method, apparatus and article of manufacture in the same application.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 9-29 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the response dated November 6, 2003.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Reba et al.

Reba et al suggested that it was known at the time the invention was made to apply pulsing air jets against fibers being dispensed from a dispenser. Reba et al suggested that filaments 5 from a discharge means 2 of a conventional melt spinner which included a high velocity air stream, see column 3, lines 31-42 and column 3, lines 48-50. the reference suggested

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that the filaments 5 were moved laterally crosswise by an air flow having periodic changing directions wherein the air flow was oriented alternatively at an angle toward the filament sheet as viewed from the horizontal plane. Namely, the reference suggested that use of nozzles 3a, 4a which were disposed on opposed sides of the filaments from the discharge and which were each associated with a conventional fluidic pulsing means (such as an air jet pulsing means), see column 4, lines 21-column 5, line 8.

Regarding claim 2, the reference suggested that those skilled in the art would have provided pauses between the air flows. Regarding claim 7, the reference suggested that those skilled in the art would have directed the airflows on opposite sides of the filament sheet. Regarding claim 8, the reference suggested that the filaments would have been directed to the Coanda surfaces 3 disposed downstream of the air jets in order to facilitate the uniform spreading of the filaments.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Rebe et al and German Patent 2114854.

The admitted prior art suggested that it was known at the time the invention was made to spunbond filaments from a spinneret and subsequently treat the filaments by pulling or drawing

the filaments aerodynamically. The reference failed to make mention of the use of a Coanda effects in order to avoid aggregation of the filaments.

The reference to Rebe suggested that those skilled in the art at the time the invention was made would have incorporated a pair of Coanda nozzles in association with Coanda surfaces in order to prevent filament aggregation and provide a spunbonded web which had greater uniformity in the finished assembly. Reba et al suggested that it was known at the time the invention was made to apply pulsing air jets against fibers being dispensed from a dispenser. Reba et al suggested that filaments 5 from a discharge means 2 of a conventional melt spinner which included a high velocity air stream, see column 3, lines 31-42 and column 3, lines 48-50. the reference suggested that the filaments 5 were moved laterally crosswise by an air flow having periodic changing directions wherein the air flow was oriented alternatively at an angle toward the filament sheet as viewed from the horizontal plane. Namely, the reference suggested that use of nozzles 3a, 4a which were disposed on opposed sides of the filaments from the discharge and which were each associated with a conventional fluidic pulsing means (such as an air jet pulsing means), see column 4, lines 21-column 5, line 8. it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the air nozzle arrangement of Rebe in the operation of the admitted prior art in order to provide for uniformity in the finished fiber assembly of the spunbonded web. The reference failed to teach that one skilled in the art would have provided for the horizontal blowing of the air jets against the filaments in the feeding operation. However, those skilled in the art at the time the invention was made would have known how to apply the air jets horizontally against the fibers as the were fed from the delivery device as evidenced by German Patent '854. Note that the sources 9 and 10 appear to be

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directing air flow against the filaments from a horizontal direction. Such would have provided one skilled in the art with uniform deposition of the filaments upon the conveyor. It would have been obvious to one of ordinary skill in the art at the time the invention was made to reorient the Coanda nozzles of Rebe et al to provide for the redirecting of the filaments according to the techniques of German Patent '854 wherein the finished assembly would have been formed into a spunbonded web as taught was known by applicant's admitted prior art.

***Allowable Subject Matter***

7. Claims 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the prior art of record taught or suggested an angle of 15 degrees for the blow out angle wherein the angle was in the horizontal plane as defined in claim 4. the reference to Mente et al suggested an angle of 15 degrees, however the angle is not in the horizontal plane, see alpha and column 3, lines 36-39.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuroiwa et al suggested a use of an airflow to provide a uniform spunbonded web.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069 (after December 18, 2003, the examiner can be reached at 571-272-1212). The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

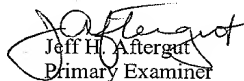
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
December 4, 2003